

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JUANITA GARZA,

Plaintiff,

v.

CAROLYN W. COLVIN,  
Commissioner of Social Security,

Defendant.

No. 1:15-CV-3188-JTR

ORDER GRANTING, IN PART,  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND  
REMANDING FOR ADDITIONAL  
PROCEEDINGS

**BEFORE THE COURT** are cross-Motions for Summary Judgment. ECF No. 14, 15. Attorney Cory J. Brandt represents Juanita Garza (Plaintiff); Special Assistant United States Attorney Franco L. Becia represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 7. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS, in part**, Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

**JURISDICTION**

Plaintiff filed an application for Disability Insurance Benefits (DIB) on April 19, 2012, alleging disability since March 5, 2010, due to depression, carpal tunnel,

1 knee injury, diabetes, back injury, a vision problem, hearing loss and gall bladder  
2 surgery. Tr. 147-154, 176. Plaintiff's application was denied initially and upon  
3 reconsideration.

4 Administrative Law Judge (ALJ) Wayne N. Araki held a hearing on March  
5 26, 2014, Tr. 25-57, and issued an unfavorable decision on April 24, 2014, Tr. 12-  
6 20. The Appeals Council denied review on September 10, 2015. Tr. 1-6. The  
7 ALJ's April 2014 decision thus became the final decision of the Commissioner,  
8 which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff  
9 filed this action for judicial review on October 22, 2015. ECF No. 1, 4.

#### 10 **STATEMENT OF FACTS**

11 The facts of the case are set forth in the administrative hearing transcript, the  
12 ALJ's decision, and the briefs of the parties. They are only briefly summarized  
13 here.

14 Plaintiff was born on March 31, 1955, and was 54 years old on the alleged  
15 disability onset date, March 5, 2010. Tr. 147. Plaintiff completed high school and  
16 also completed college coursework in secretarial training. Tr. 31-32, 177. Plaintiff  
17 has over 30 years of work experience as a legal assistant for various attorneys'  
18 offices. Tr. 32-36, 177. She stated she was let go from her last legal secretary  
19 position because her production was low. Tr. 35. Plaintiff indicated on her  
20 disability report form that she stopped working on March 5, 2010, because she was  
21 laid off, and by June 1, 2011, her conditions prevented her from working. Tr. 176.

22 At the March 26, 2014, administrative hearing, Plaintiff testified she took  
23 medication, Neurontin and Gabapentin, for diabetic neuropathy. Tr. 37, 40. She  
24 stated these pain medications had been helpful. Tr. 40. She indicated she had also  
25 been on two diabetic medications, including Metformin, for a year prior to the  
26 administrative hearing. Tr. 39. She stated she had problems with her hands  
27 despite prior carpal tunnel surgery, knee and back pain, and some problems with  
28 depression and anxiety. Tr. 41-42, 47-48, 52-53.

1 Plaintiff testified she had been without health insurance for four years from  
2 the time she stopped working and had only recently established regular care with a  
3 physician. Tr. 49. She had previously attended the Mission for diabetic and  
4 mental health care. Tr. 49-51.

5 Plaintiff testified she is able to dress herself, but has difficulty tying her  
6 shoes, fastening buttons and using zippers. Tr. 42, 44-45. She can do the laundry,  
7 but she does not sweep or vacuum, and her husband does all of the yard work. Tr.  
8 42-44. Plaintiff is able to drive but stated she will not do so if she has taken her  
9 medications. Tr. 48.

#### 10 STANDARD OF REVIEW

11 The ALJ is responsible for determining credibility, resolving conflicts in  
12 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
13 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed de novo, with  
14 deference to a reasonable construction of the applicable statutes. *McNatt v. Apfel*,  
15 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
16 only if it is not supported by substantial evidence or if it is based on legal error.  
17 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
18 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
19 1098. Put another way, substantial evidence is such relevant evidence as a  
20 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
21 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
22 rational interpretation, the court may not substitute its judgment for that of the  
23 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,  
24 169 F.3d 595, 599 (9th Cir. 1999). Nevertheless, a decision supported by  
25 substantial evidence will be set aside if the proper legal standards were not applied  
26 in weighing the evidence and making the decision. *Browner v. Secretary of Health*  
27 *and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If evidence supports the  
28 administrative findings, or if conflicting evidence supports a finding of either

1 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*  
 2 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

### 3 SEQUENTIAL EVALUATION PROCESS

4 The Commissioner has established a five-step sequential evaluation process  
 5 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),  
 6 416.920(a); *see, Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one  
 7 through four, the burden of proof rests upon the claimant to establish a prima facie  
 8 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This  
 9 burden is met once a claimant establishes that a physical or mental impairment  
 10 prevents him from engaging in his previous occupation. 20 C.F.R. §§  
 11 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the  
 12 ALJ proceeds to step five, and the burden shifts to the Commissioner to show that  
 13 (1) the claimant can make an adjustment to other work; and (2) specific jobs exist  
 14 in the national economy which claimant can perform. *Batson v. Commissioner of*  
 15 *Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make  
 16 an adjustment to other work in the national economy, a finding of "disabled" is  
 17 made. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

### 18 ADMINISTRATIVE DECISION

19 The ALJ found Plaintiff had not engaged in substantial gainful activity since  
 20 March 5, 2010, the alleged onset date. Tr. 14. At step two, the ALJ determined  
 21 Plaintiff had the severe impairments of osteoarthritis of the bilateral knees,  
 22 diabetes mellitus, back disorder, and bilateral carpal tunnel syndrome. Tr. 14. The  
 23 ALJ specifically determined Plaintiff's mental health symptoms did not cause  
 24 more than minimal limitations in her ability to perform basic mental work  
 25 activities; therefore, he did not find Plaintiff suffered from a severe mental health  
 26 impairment. Tr. 14-15.

27 At step three, the ALJ found Plaintiff did not have an impairment or  
 28 combination of impairments that meets or medically equals the severity of one of

1 the listed impairments. Tr. 16. The ALJ assessed Plaintiff's Residual Functional  
2 Capacity (RFC) and determined she could perform light exertion level work, but  
3 could stand or walk in only two-hour intervals for eight hours per day; could only  
4 occasionally kneel, crawl and climb stairs or ladders; and could not climb ropes or  
5 scaffolds. Tr. 17. The RFC determination does not mention any restrictions  
6 related to Plaintiff's severe carpal tunnel impairment, such as the need to avoid  
7 repetitive lifting or keyboarding as opined by examining physicians Drs. Seltzer  
8 and Shaul and the state agency reviewing physician. *See* Tr. 80, 283.

9 At step four, the ALJ found Plaintiff was able to perform her past relevant  
10 work as a legal assistant as generally performed. Tr. 19-20. The ALJ thus  
11 concluded Plaintiff was not under a disability within the meaning of the Social  
12 Security Act at any time from March 5, 2010, the alleged onset date, through the  
13 date of the ALJ's decision, April 24, 2014. Tr. 20.

## 14 ISSUES

15 The question presented is whether substantial evidence supports the ALJ's  
16 decision denying benefits and, if so, whether that decision is based on proper legal  
17 standards. Plaintiff contends the ALJ erred by (1) improperly rejecting the opinion  
18 of her examining provider William Drenguis, M.D.; (2) improperly discrediting  
19 Plaintiff's subjective complaints; and (3) failing to conduct a proper step four  
20 assessment.

## 21 DISCUSSION

### 22 A. Plaintiff's Credibility

23 Plaintiff contends the ALJ erred by failing to provide specific, clear and  
24 convincing reasons for rejecting her subjective complaints. ECF No. 14 at 9-11.  
25 The Court agrees.

26 It is the province of the ALJ to make credibility determinations. *Andrews v.*  
27 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be  
28 supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231

(9th Cir. 1990). Once the claimant produces medical evidence of an underlying medical impairment, the ALJ may not discredit testimony as to the severity of an impairment because it is unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's testimony must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General findings are insufficient: rather the ALJ must identify what testimony is not credible and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

In this case, the ALJ found Plaintiff's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, Plaintiff's statements concerning the intensity, persistence and limiting effects of the symptoms were not entirely credible. Tr. 17.

### **1. Objective Medical Evidence**

The ALJ determined the objective medical evidence of record did not support Plaintiff's disability assertions. Tr. 17. A lack of supporting objective medical evidence is a factor which may be considered in evaluating a claimant's credibility, provided it is not the sole factor. *Bunnell v. Sullivan*, 347 F.2d 341, 345 (9th Cir. 1991).

The ALJ first indicated that medical evidence from the relevant time period did not support Plaintiff's allegations of worsening hand problems. Tr. 17-18. The ALJ cited the May 14, 2012, report of Theodore H. Palmatier, M.D., which indicated Plaintiff had full range of motion of the bilateral hands, wrist and elbows; her sensation of the upper extremities was intact; she had 27 kg grip strength bilaterally; and there was no objective worsening of Plaintiff's condition since October 10, 2005, Tr. 17, 242-243, and the June 30, 2012, report of William Drenguis, M.D., which indicated Plaintiff's elbow, wrist, and finger range of

1 motion bilaterally was unremarkable and that Plaintiff had normal strength and  
2 sensation in her upper extremities, Tr. 18, 249-250.

3 However, Dr. Palmatier also determined Plaintiff had right MCC joint  
4 discomfort and positive Finkelstein's bilaterally, demonstrating the presence of  
5 tendinitis. Tr. 242-243. With regard to employability, Dr. Palmatier indicated  
6 Plaintiff would have limits of function regarding the bilateral upper extremities.  
7 Tr. 242. He stated Plaintiff should limit repetitive motion work, especially  
8 involving the right upper extremity. *Id.*

9 June 2012 x-rays of Plaintiff's right hand revealed "[p]rominent  
10 degenerative changes of the thumb IP joint . . . [l]esser degenerative changes of the  
11 PIP joints." Tr. 245. Although a September 12, 2012, independent medical  
12 examination conducted by S. Daniel Seltzer, M.D., and Stephen R. Shaul, M.D.,  
13 indicated x-rays of Plaintiff's hands and wrists were unremarkable with no sign of  
14 progressive arthritic change, Tr. 275, Drs. Seltzer and Shaul opined on October 8,  
15 2012, that Plaintiff should limit repetitive lifting and keyboarding, Tr. 283.

16 On September 18, 2012, James Dodge, M.D., completed a bone imaging  
17 study which suggested "complex regional pain syndrome of the right upper  
18 extremity." Tr. 284. On the same date, Voderbet C. Kamath, M.D., conducted a  
19 nerve study. Tr. 286-287. The nerve study results revealed mild bilateral carpal  
20 tunnel syndrome and mild left cubital tunnel syndrome. Tr. 287.

21 Finally, on December 27, 2012, state agency reviewing physician Norman  
22 Staley, M.D., indicated Plaintiff was limited in pushing and pulling in her upper  
23 extremities and limited in reaching with her left and right arm in front and/or  
24 laterally and overhead. Tr. 79-80. He opined Plaintiff's reaching should be  
25 limited to frequent or less and that she should avoid repetitive movements such as  
26 lifting and keyboarding. Tr. 80.

27 The Court finds the objective medical evidence of record is not inconsistent  
28 with Plaintiff's allegations of arm weakness and pain. Tr. 42.



1 The ALJ next noted that the objective medical evidence of record did not  
2 support the level of Plaintiff's allegations with respect to her knee and back  
3 problems. Tr. 18. However, Dr. Drenguis' report indicated Plaintiff shifted from  
4 side to side during the interview in an attempt to get comfortable; she was unable  
5 to walk on her toes or heels because of left leg pain; Plaintiff was unable to hop  
6 because of back pain; a full squat caused knee popping and pain; she had limited  
7 range of motion in her lumbar spine; and she had pain with palpation along the  
8 medial joint of her left knee and crepitus in her left knee. Tr. 248-249. Dr.  
9 Drenguis opined that Plaintiff had symptoms of osteoarthritis in her lumbar spine  
10 and left knee which would limit her to a maximum of four hours of standing and  
11 walking during an eight-hour workday. Tr. 250. The ALJ gave weight to the  
12 opinion of Dr. Drenguis and specifically found Plaintiff would "be able to stand  
13 and/or walk for four hours." Tr. 19.

14 Contrary to the ALJ's determination, the Court finds Plaintiff's knee and  
15 back complaints are substantiated by objective record evidence.

## 16 **2. Responsibility for Healthcare**

17 The ALJ additionally indicated the record suggested Plaintiff did not take  
18 full responsibility for her healthcare, "which suggests that her complaints are not as  
19 severe as alleged." Tr. 18. Noncompliance with medical care or unexplained or  
20 inadequately explained reasons for failing to seek medical treatment may cast  
21 doubt on a claimant's subjective complaints. 20 C.F.R. §§ 404.1530, 426.930;  
22 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).

23 The ALJ noted Plaintiff was instructed in January 2013 to follow up with her  
24 treatment provider regarding starting diabetes medication as soon as possible, but  
25 Plaintiff had failed to do so. Tr. 18. However, at the March 26, 2014,  
26 administrative hearing, Plaintiff testified she had been on two diabetic medications,  
27 including Metformin, for a year prior to the hearing. Tr. 39. In any event, an ALJ  
28 must not draw an adverse inference from a claimant's failure to seek or pursue



1 treatment “without first considering any explanations that the individual may  
2 provide, or other information in the case record, that may explain infrequent or  
3 irregular medical visits or failure to seek medical treatment.” S.S.R. 96-7; *see*  
4 *Dean v. Astrue*, 2009 WL 2241333 (E.D. Wash. 2009) (noting “the SSR  
5 regulations direct the ALJ to question a claimant at the administrative hearing to  
6 determine whether there are good reasons for not pursuing medical treatment in a  
7 consistent manner”). As discussed at the administrative hearing, Plaintiff had been  
8 without health insurance for four years after she lost her job. Tr. 49. A lack of  
9 medical insurance provides a reasonable basis for a failure to pursue treatment for  
10 medical issues.

11 Although the ALJ indicated Plaintiff failed to attend an appointment  
12 regarding an application for health insurance under the Affordable Care Act, Tr.  
13 18, the ALJ neglected to explore why Plaintiff missed the appointment. In any  
14 event, the ALJ provided no explanation for how the failure to attend a health  
15 insurance appointment equated to noncompliance with medical care or a failure to  
16 seek medical treatment, directly affected Plaintiff’s ability to care for her health, or  
17 otherwise detracted from her overall credibility.

### 18 **3. Awareness of A1c Reading**

19 The ALJ lastly stated that Plaintiff’s lack of awareness of her A1c reading, a  
20 critical component in determining control of diabetes, suggested Plaintiff was not  
21 entirely credible. Tr. 18.

22 The A1c test, a blood test that provides information about a person’s average  
23 levels of blood glucose (blood sugar) over the past two to three months, is  
24 performed on people who have diabetes about once every three months. The A1c  
25 reading assesses how well a diabetes management plan is working and whether  
26 diabetes medicines need to be adjusted.

27 The ALJ provided no reasoning for how a lack of awareness of this  
28 particular medical determination detracted from Plaintiff’s credibility. The Court

1 finds the fact that Plaintiff was not aware of her A1c reading at the time of the  
2 administrative hearing is not a clear and convincing reason to reject her testimony.

3 The ALJ is responsible for reviewing the evidence and resolving conflicts or  
4 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.  
5 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in  
6 evidence. *Richardson*, 402 U.S. at 400. The Court has a limited role in  
7 determining whether the ALJ's decision is supported by substantial evidence and  
8 may not substitute its own judgment for that of the ALJ even if it might justifiably  
9 have reached a different result upon *de novo* review. 42 U.S.C. § 405(g).

10 Nevertheless, based on the foregoing, the Court finds that the rationale provided by  
11 the ALJ for discrediting Plaintiff is not clear and convincing. The Court thus  
12 concludes a remand for a proper credibility determination is necessary in this case.

### 13 **B. Medical Opinion Evidence**

14 Plaintiff also contends the ALJ erred by improperly rejecting the medical  
15 opinion of her examining provider Dr. Drenguis. ECF No. 14 at 7-9.

16 On June 30, 2012, Dr. Drenguis examined Plaintiff. Tr. 247-251. Dr.  
17 Drenguis diagnosed osteoarthritis of the knees and lumbar pain consistent with  
18 osteoarthritis of the lumbar spine. Tr. 250. As stated above, Dr. Drenguis opined  
19 that Plaintiff was limited to a maximum of four hours of standing and walking  
20 during an eight-hour workday. Tr. 249-250.

21 The ALJ gave "some weight" to the opinion of Dr. Drenguis and specifically  
22 stated Plaintiff would "be able to stand and/or walk for four hours." Tr. 19. While  
23 this finding by the ALJ does not appear to be in conflict with Dr. Drenguis' report,  
24 the ALJ's RFC determination does not account for a restriction of a maximum of  
25 only four hours of standing and/or walking during an eight-hour workday. Tr. 17.

26 As concluded above, in light of the ALJ's erroneous credibility  
27 determination, this matter will be remanded for additional proceedings. On  
28 remand, the ALJ shall reconsider Plaintiff's statements and testimony. The ALJ

1 shall additionally reassess Plaintiff's RFC, taking into consideration the medical  
2 opinions of Dr. Drenguis, Tr. 247-251, and all other evidence of record relevant to  
3 Plaintiff's claim for disability benefits. In addition, the ALJ shall direct Plaintiff to  
4 undergo a new consultative physical examination and, if warranted, elicit the  
5 testimony of a medical expert to assist the ALJ in formulating a new RFC  
6 determination.

7 **C. Step Four Determination**

8 Plaintiff has also specifically challenged the ALJ's step four determination  
9 in this case. ECF No. 14 at 12-14.

10 A claimant will be found not disabled when it is determined that she retains  
11 the RFC to perform either the actual functional demands and job duties of a  
12 particular past relevant job, or the functional demands and job duties of the  
13 occupation as generally required by employers throughout the national economy.  
14 S.S.R. 82-61. "If a claimant shows that he or she cannot return to his or her  
15 previous job, the burden of proof shifts to the Secretary to show that the claimant  
16 can do other kinds of work." *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988).  
17 Therefore, the burden shifts to the ALJ to identify specific jobs existing in  
18 substantial numbers in the national economy that a claimant can perform despite  
19 her identified limitations only after a claimant has established a prima facie case of  
20 disability by demonstrating she cannot return to her former employment. *Hoffman*  
21 *v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986).

22 As determined above, the ALJ's credibility determination is not supported  
23 by substantial evidence in this case; therefore, this matter must be remanded for  
24 additional proceedings. *Supra*. On remand, the ALJ shall also reassess steps four  
25 and five of the sequential evaluation process, with the assistance of a vocational  
26 expert, to address whether Plaintiff is able to return to her past relevant work or to  
27 make a vocational adjustment to other work in the national economy.

28 ///

## CONCLUSION

Plaintiff argues the ALJ's decision should be reversed and remanded for an immediate award of benefits. ECF No. 14 at 14. The Court has the discretion to remand the case for additional evidence and findings or to award benefits. *Smolen*, 80 F.3d at 1292. The Court may award benefits if the record is fully developed and further administrative proceedings would serve no useful purpose. *Id.* Remand for additional proceedings is appropriate when additional proceedings could remedy defects. *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court finds that further development is necessary for a proper determination to be made.

On remand, the ALJ shall reconsider Plaintiff's statements and testimony and reassess Plaintiff's RFC, taking into consideration the medical opinions of Dr. Drenguis, Tr. 247-251, and all other evidence of record relevant to Plaintiff's claim for disability benefits, including medical reports finding Plaintiff should avoid repetitive movements such as lifting and keyboarding. The ALJ shall additionally develop the record further by requiring Plaintiff to undergo a new consultative physical evaluation prior to a new administrative hearing and, if warranted, by eliciting medical expert testimony to assist the ALJ in formulating a new RFC determination. With the assistance of a vocational expert, and ensuring the vocational expert is provided a hypothetical that is consistent with the RFC ultimately determined, the ALJ shall reassess steps four and five of the sequential evaluation process to address whether Plaintiff is capable of performing her past relevant work or any other work existing in sufficient numbers in the national economy.

Accordingly, **IT IS ORDERED:**

1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **GRANTED, in part.**

///

1           2.     Defendant's Motion for Summary Judgment, **ECF No. 15**, is  
2 **DENIED**.

3           3.     The matter is **REMANDED** to the Commissioner for additional  
4 proceedings consistent with this Order.

5           4.     An application for attorney fees may be filed by separate motion.  
6           The District Court Executive is directed to file this Order and provide copies  
7 to counsel. **Judgment shall be entered in favor of Plaintiff**, and the file shall be  
8 **CLOSED**.

9           DATED November 3, 2016.

A handwritten signature in black ink, appearing to be "M" or "Rodgers", is written above a horizontal line.

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE